

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Petition of American Cellular Corporation to Redefine Certain)	DA 04-2191
Rural Telephone Company Service Areas in the State of)	
Wisconsin)	

COMMENTS OF CENTURYTEL, INC.

CenturyTel, Inc. ("CenturyTel"), through its attorneys, hereby offers the following Comments in response to the Federal Communications Commission's ("FCC" or "Commission") Public Notice seeking comment in the above-referenced proceeding.¹

I. INTRODUCTION

On June 18, 2004, the Public Service Commission of Wisconsin ("Wisconsin PSC") conditionally granted the request of American Cellular Corporation ("ACC"), a Commercial Mobile Radio Service ("CMRS") provider, to be designated as a competitive eligible telecommunications carrier ("CETC") in rural incumbent local exchange carrier ("ILEC") study areas for the purpose of receiving high-cost support from the federal universal service program only, pending FCC agreement in redefining the service area for ACC to deviate from the study areas of the Wisconsin rural telephone companies ("Rural ILECs").² On July 16, 2004, ACC filed a petition at the FCC for consent to redefine certain Rural ILECs' service

¹ *The Wireline Competition Bureau Seeks Comment on Petition to Redefine Certain Rural Telephone Company Service Areas in the State of Wisconsin*, Public Notice, CC Docket 96-45, DA 04-2191 (rel. July 21, 2004) ("Public Notice").

² *Application of American Cellular Corporation for Designation as an Eligible Telecommunications Carrier in Wisconsin*, 8206-TI-100, 2004 Wisc. PUC LEXIS 334 (June 18, 2004) ("ACC Designation Order").

areas.³ On July 21, 2004, the FCC sought comment on the Petition.⁴ Of particular note to CenturyTel is ACC's proposal to redefine CenturyTel's service area at the wire center level.⁵

II. THE FCC SHOULD NOT ALLOW THE WISCONSIN RURAL SERVICE AREAS TO BE CHANGED WITHOUT A WRITTEN COMMISSION DECISION

The ACC Petition is at least the third Petition filed in less than a year to redefine the service areas of CenturyTel in Wisconsin.⁶ Just as the Commission did in response to the earlier petition filed by ALLTEL, the Commission should initiate a proceeding here to fully consider all of the possible ramifications of granting the ACC Petition.⁷ As CenturyTel has argued in prior comments, Section 214(e)(5) of the Communications Act of 1934, as amended (the "Act"), requires the FCC to take into consideration the Federal-State Joint Board's recommendations before changing the service area for a rural telephone company. A written decision is physical evidence of whether the FCC actually considered the Joint Board's recommendations.

³ *In the Matter of Federal-State Joint Board on Universal Service, American Cellular Corporation Petition for Agreement in Redefining the Service Area Requirement for Certain Rural Telephone Company Study Areas in the State of Wisconsin pursuant to 47 C.F.R. §54.207(c)*, filed in CC Docket No. 96-45 on July 16, 2004 ("Petition").

⁴ Public Notice.

⁵ ACC has requested FCC approval to redefine the service areas of the following five CenturyTel subsidiaries: CenturyTel of Central Wisconsin, CenturyTel of Northwest Wisconsin, CenturyTel of the Midwest-Kendall, CenturyTel of Midwest-Wisconsin, and Telephone USA of Wisconsin, LLC.

⁶ *See The Wireline Competition Bureau Seeks Comment on Alltel's Petition to Redefine Rural Telephone Company Service Areas in the State of Wisconsin*, Public Notice in CC Docket 96-45, DA 03-3876 (rel. Dec. 4, 2003) ("Alltel Public Notice"); *The Wireline Competition Bureau Seeks Comment on Petition to Redefine Certain Rural Telephone Company Service Areas in Wisconsin and Minnesota*, CC Docket 96-45, DA 04-2063 (rel. Jul. 8, 2004) ("CTC Public Notice").

⁷ *Wireline Competition Bureau Initiates Proceeding to Consider the ALLTEL Communications, Inc. Petition to Redefine Rural Telephone Company Service Areas in the State of Wisconsin*, Public Notice, CC Docket No. 96-45, DA 04-565 (rel. Feb. 26, 2004).

Furthermore, the FCC has an obligation to consider all the arguments made -- both in support of *and* against the Petition. As demonstrated herein, there are considerable questions regarding the merits of the Petition, which the FCC must demonstrate that it has fully considered. The current controversy surrounding the Joint Board's recent Recommended Decision⁸ and the pressure on the nation's universal service system further demonstrate the need for a written decision in this case. Although the Joint Board endorsed the current processes in place for consideration of requests for service area redefinition, in his strongly worded dissent, Joint Board Member and Commissioner Kevin Martin stated:

I would have . . . preferred that the Joint Board recommend that the Commission require ETCs to provide service throughout the same geographic service area in order to receive universal service support. This obligation would help guard against the potential for creamskimming. I would have supported a recommendation to deny future requests to redefine the service areas of incumbent rural telephone companies--and to deny ETC designations in instances where an ETC's proposed service area does not cover the entire service area of the incumbent service provider.⁹

CenturyTel could not agree more. The FCC should not allow the Petition to take effect automatically as it sometimes has done in the past.¹⁰ Rather, as has become the FCC's more recent practice,¹¹ the FCC should initiate a proceeding here to thoroughly consider the financial and consumer impact of redefining the Rural ILECs' study areas as proposed in the Petition.

⁸ *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 04J-1 (rel. Feb. 27, 2004) ("*Joint Board Recommended Decision*").

⁹ *Joint Board Recommended Decision*, Separate Statement of Commissioner Martin, at 2 ("*Separate Statement of Commissioner Martin*").

¹⁰ See Application for Review or, Alternatively, Petition for Reconsideration of CenturyTel of Eagle, Inc. filed in CC Docket 96-45 on Dec. 17, 2002.

¹¹ *The Wireline Competition Bureau Initiates Proceeding to Consider the Petition Filed by the Colorado Public Utilities Commission to Redefine the Service Area of Delta County*

III. THE COMMISSION SHOULD CONSIDER CENTURYTEL'S LEVEL OF DISAGGREGATION, NOT DISREGARD IT

The Commission stated in the *RTF* Order, “the level of disaggregation of support should be considered in determining whether to certify new [ETCs] for a service area other than a rural carrier’s entire study area to ensure that competitive neutrality is maintained between incumbent carriers and competitive [ETCs].”¹² The Wisconsin PSC failed to follow this direction, and instead ignored CenturyTel’s choice not to disaggregate its support.¹³ The Commission should deny ACC’s Petition or postpone action to redefine CenturyTel’s service area until CenturyTel is given the opportunity to re-evaluate whether to disaggregate support to at least partially mitigate the effects of such redefinition.

Based on CenturyTel’s careful analysis of the study areas in question and a number of other factors, including the level of competition in the market, customer density, costs, and the amount of available support, CenturyTel’s decision not to disaggregate was a sensible one. CenturyTel currently experiences significant competition from both wireline and wireless competitors in each of the CenturyTel study areas that ACC seeks to have redefined in

Tele-comm, Inc. in the State of Colorado, Public Notice in CC Docket 96-45, DA 02-3588 (rel. Dec. 24, 2002); *The Wireline Competition Bureau Initiates Proceeding to Consider the Colorado Public Utilities Commission Petition to Redefine the Service Area of Wiggins Telephone Association in the State of Colorado*, Public Notice in CC Docket 96-45, DA 03-2859 (rel. Sept. 9, 2003); *The Wireline Competition Bureau Initiates Proceeding to Consider the ALLTEL Communications, Inc. Petition to Redefine Rural Telephone Company Service Areas in the State of Wisconsin*, Public Notice, CC Docket No. 96-45, DA 04-565 (rel. Feb. 26, 2004).

¹² *Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order, 16 FCC Rcd 11244, 11308 (¶ 164) (2001) (“*RTF Order*”); see *Joint Board Recommended Decision*, at n.213 (citing *id.*).

¹³ *RTF Order* at 11303 (¶ 148).

this proceeding. For example, eighteen CETCs in the seven study areas that ACC seeks to have redefined already receive support totaling \$3.7 million, with the potential of an additional \$4.9 million being disbursed either to CETCs that do not currently receive support or to carriers with pending ETC applications.¹⁴ Indeed, six CETCs already have been designated in the Kendall study area alone, while at least one CETC has been designated in each of the six other study areas.¹⁵ CenturyTel reminds the FCC that these are rural markets with low customer densities – not large metropolitan areas.

If the FCC consents to redefining the study areas of the Wisconsin rural telephone companies as proposed in the Petition, ACC would be allowed to serve individual wire centers, although support would be based on CenturyTel's average per-line costs for its *entire* study area – not based on its individual wire center (and sub-wire center)¹⁶ costs. Because support continues to be based on CenturyTel's cost of providing service to the *entire* study area, the Petition fails to ensure that support is aligned with costs. This failure could inure an unfair

¹⁴ See <http://www.universalservice.org/overview/filings/2004/Q3/default.asp> (HC18 – CETC Reported Lines by Incumbent Study Area - High Cost Loop Support 3Q2004)

¹⁵ Three carriers have been designated in the study areas of CenturyTel of the Midwest – Wisconsin (Cencom) and Telephone USA of Wisconsin, and two carriers have been designated in the study areas of CenturyTel of Central Wisconsin and CenturyTel of the Midwest – Wisconsin (Wayside).

¹⁶ Both the Petition and the *ACC Designation Order* seem to suggest that the rural ILEC's study areas would be redefined at the sub-wire center level if the FCC consents to the Petition. See Petition at 9; *ACC Designation Order* at 10. To the extent that ACC and the Wisconsin PSC seek FCC agreement in redefining the study areas of the Wisconsin rural telephone companies at the sub-wire center level, CenturyTel notes that the FCC already has concluded in the *Highland Cellular Order* that “making designations for a portion of a rural telephone company's wire center would be inconsistent with the public interest.” *Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, FCC 04-37 (“*Highland Cellular Order*”) at ¶33. Accordingly, the FCC should categorically deny any request to redefine the service areas of the Wisconsin rural telephone companies at the sub-wire center level.

competitive advantage to ACC. To provide greater certainty and to decrease the pressure on already scarce funds, CenturyTel urges the Commission to deny the Petition, or initiate a proceeding to further consider whether service area redefinition is appropriate in light of the level of disaggregation currently in effect in CenturyTel's study areas. Moreover, in the event that the Commission grants the Petition, CenturyTel respectfully requests that the Commission delay effectiveness of such grant to allow CenturyTel to reconsider its disaggregation path, particularly in light of the increasing number of CETCs serving CenturyTel's study areas.

IV. THE WISCONSIN PSC DID NOT APPLY THE STANDARDS SET FORTH IN *VIRGINIA CELLULAR*

CenturyTel takes issue with the Wisconsin PSC's failure to apply the standards set forth in the *Virginia Cellular Order*. In that order, the FCC stated, for example, that it would evaluate the population density of each affected wire center to determine whether the proposed designation raised rural cream-skimming concerns.¹⁷ The Wisconsin PSC did not analyze population density, and the Petition does not provide such data for the FCC's review. The FCC should order ACC to supplement its Petition with population density data in accordance with the *Virginia Cellular Order*.

V. ACC SHOULD BE REQUIRED TO SERVE THE ENTIRE TERRITORY OF THE RURAL ILECS THROUGH A COMBINATION OF FACILITIES AND RESALE

In the ACC designation proceeding, the Wisconsin PSC conditionally granted ACC's request to be designated as an ETC for parts of the territory of a rural telephone company, but did not require the CMRS carrier to serve the study areas of the Rural ILECs in their entirety. The Act and the FCC's rules require ETCs to serve the ILEC's entire study area either using

¹⁷ *Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 1563 ("*Virginia Cellular Order*") at 1582, ¶42.

their own facilities or a combination of their own facilities and resale of another carrier's services,¹⁸ unless the state and the FCC affirmatively find it would serve the public interest to forego this requirement. The Wisconsin PSC failed to satisfy this obligation.

The Petition does not assert that ACC is a new service provider in CenturyTel's study area. To the contrary, the *ACC Designation Order* acknowledges that ACC already provides service to some of the areas for which it seeks federal support.¹⁹ Nor does the Petition require ACC to provide service throughout the Rural ILECs' study areas, thereby truly bringing competitive choice to *all* customers not now served by ACC. The lack of facilities does not preclude competitive ETCs from serving the ILEC's entire study area. ACC can and should be required to expand its coverage to serve the Rural ILECs' entire study areas through some combination of its own facilities and resale of another carrier's services, as required by Section 214(e) of the Act.

As noted above, this is at least the third petition filed within a year to redefine the service areas of CenturyTel in Wisconsin. Although the number of CETCs continues to increase, consumers in rural America have not yet begun to reap the benefits of such designations. As a result, CETCs are not advancing the universal service principles of Section 254 of the Act in any meaningful way. Granting the Petition will not bring rural consumers the increased competitive choice that the Wisconsin PSC anticipates (ACC is already an established wireless provider in the Wisconsin markets), and contrary to the Wisconsin PSC's claims that the Petition may "spur"

¹⁸ 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.201(d)(1).

¹⁹ *ACC Designation Order* at 6, 8.

ILEC infrastructure deployment,²⁰ the Petition actually could have the effect of diminishing rural ILEC investment.

VI. ACC SHOULD BE REQUIRED TO COMPLY WITH STATE REQUIREMENTS REGARDLESS OF WHETHER IT SEEKS STATE UNIVERSAL SERVICE SUPPORT

In the state designation proceeding, the Wisconsin PSC concluded that ACC shall not be subject to Wisconsin's state requirements and obligations because ACC does not intend to apply for state universal service support.²¹ As CenturyTel has advocated previously, a CETC should be required to comply with the same state requirements as the carrier-of-last-resort or the ILEC serving the area for which the CETC seeks *federal or state* universal service support.²² Subjecting CETCs and ILECs to different rules inures an unfair competitive advantage to CETCs. Accordingly, ACC should be required to comply with the same *state* requirements as CenturyTel regardless of whether ACC applies for state universal service support.

VII. IT WOULD BE PREMATURE TO REDEFINE CENTURYTEL'S SERVICE AREA BEFORE THE FCC RESOLVES THE ISSUES RAISED IN THE ETC RULEMAKING

CenturyTel believes that redefining the Rural ILECs' study areas in the manner proposed by the Wisconsin PSC is premature. The Commission has before it a comprehensive proceeding in which it is considering the *Joint Board Recommended Decision*, and has sought comment on the process for consideration of requests for service area redefinitions. The FCC also has before it a number of other specific requests to modify rural service areas for competitive ETCs that do not desire to serve the entire study area of the rural LEC on whose

²⁰ *Id.* at 8.

²¹ *Id.* at 5-6.

²² Letter from Karen Brinkmann to Secretary Dortch filed November 18, 2003 (Notice of *Ex Parte* Presentation in CC Docket No. 96-45) at 5.

federal universal support they desire to draw, including several others affecting the CenturyTel rural LECs in Wisconsin.²³

FCC precedent demonstrates that service area redefinitions have broad applications and lower the bar for *all* subsequent competitive ETC designations in the rural carrier's service area with no perceptible benefit for rural customers who live in those service areas.²⁴ This outcome, however, is contrary to Section 214(e) of the Act, which requires that each rural ETC designation must be reviewed and granted only if determined to be in the public interest. Comments on the Joint Board's Recommended Decision will likely flesh out the benefits and burdens to the public of supporting ETCs that do not serve the same area as the ILEC.

CenturyTel urges the FCC to postpone decision in this case so it may benefit from industry comment on the recommendations of the Joint Board in the pending rulemaking proceeding.²⁵ Deferring a decision for the brief period until the FCC issues an order based on the Joint Board's recommendations and industry comment will not harm ACC as it is currently providing service in CenturyTel's study area based on a business model that is working. At the

²³ *E.g., Pleading Cycle Established for Comments Regarding Applications for Review of Orders Designating Eligible Telecommunications Carriers in the State of Alabama*, FCC Public Notice in CC Docket 96-45 (rel. Jan. 10, 2003); *Pleading Cycle Established for Comments on Proceeding Regarding the Definition of the Rural Service Areas of Two Rural Telephone Companies in the State of Colorado*, FCC Public Notice in CC Docket 96-45, DA 03-26 (rel. Jan. 7, 2003).

²⁴ *Cellular South Alabama ETC Order* at ¶ 2 (holding that the CETC applicant's request to redefine CenturyTel's service area to the wire center level was "moot," because the Commission has "recently agreed to a redefinition of the service areas of these rural telephone companies").

²⁵ Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, FCC 03J-1, CC Docket No. 96-45 (rel. Feb. 7, 2003) ("*CETC Proceeding*").

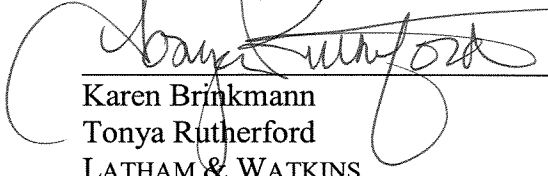
very least, the FCC should initiate a proceeding here just as it has done recently in other proceedings seeking to redefine service areas.

VIII. CONCLUSION

CenturyTel opposes the Petition to redefine CenturyTel's study area at the wire center level. The FCC should not permit ACC to pick and choose among individual wire centers. Rather, it should be required to serve the Rural ILECs' entire territory through a combination of its own facilities and resale of another carrier's services. CenturyTel urges the FCC to delay the redefinition of the Rural ILECs' study areas until the FCC resolves the issues raised in the CETC proceeding. In any event, the FCC should not allow CenturyTel's service area to be changed without a written FCC decision.

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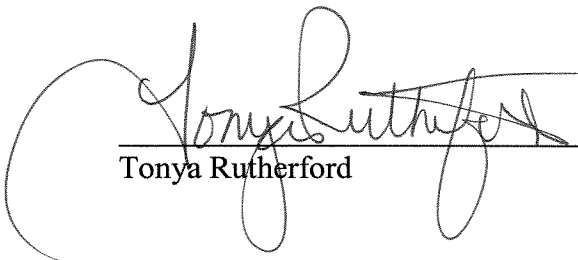
August 4, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments was sent by 1st Class US mail, this 4th day of August 2004, to:

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